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SEE ADDITIONAL COUNSEL ON PAGE 2

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ALLERGAN USA, INC., and
ALLERGAN INDUSTRIE, SAS,

Plaintiffs,

v.

MEDICIS AESTHETICS, INC.,
MEDICIS PHARMACEUTICAL CORP.,
VALEANT PHARMACEUTICALS
NORTH AMERICA LLC,
VALEANT PHARMACEUTICALS
INTERNATIONAL, and
VALEANT PHARMACEUTICALS
INTERNATIONAL, INC.

Defendants.

Case No. 8:13-cv-01436 AG (JPRx)

**S.P.R. 3.4 JOINT CLAIM
CONSTRUCTION AND
PREHEARING STATEMENT**

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Pursuant to Standing Patent Rule 3.4, Plaintiffs Allergan USA, Inc. and Allergan Industrie, SAS (“Plaintiffs” or “Allergan”) and Defendants Medicis Aesthetics, Inc., Medicis Pharmaceutical Corp., Valeant Pharmaceuticals North America LLC, Valeant Pharmaceuticals International, and Valeant Pharmaceuticals International, Inc. (“Defendants”) hereby submit their Joint Claim Construction and Prehearing Statement.

I. THE PARTIES’ AGREED CONSTRUCTIONS

A. The ’475 Patent

The parties have agreed to the following constructions for these terms in U.S. Patent No. 8,450,475 (“the ’475 patent”):

| Claim Term (claim) | Agreed Construction |
|--|--|
| sterile (claims 1, 18, 27, 34) | substantially free of detectable, viable microorganisms |
| degree of crosslinking (claims 5-7, 18, 27, 31, 37) | the percent weight ratio of crosslinking agent to HA monomeric units (HA disaccharide units) within the crosslinked portion of the HA based composition (i.e., (total mass of crosslinking agent / total mass of monomeric units) * 100)) The “crosslinked portion of the HA based composition” as used herein has the same construction as the other terms referring to “crosslinked HA,” as construed by the Court. |
| [X]% uncrosslinked HA by volume (Claims 1, 2, 33, 36) | the percent weight ratio of uncrosslinked HA in a filler composition (i.e., ((mass of uncrosslinked HA in the composition / mass of total HA in the composition)*100) Uncrosslinked HA as used herein has the same construction as the “uncrosslinked |

| | | |
|---|------------------------|--|
| 1 | | HA” term, as construed by the Court. |
| 2 | [X]% free HA by volume | the percent weight ratio of free HA in a |
| 3 | (Claims 27) | filler composition (i.e., ((mass of free |
| 4 | | HA in the composition / mass of total |
| 5 | | HA in the composition)*100) |
| 6 | | Free HA as used herein has the same |
| 7 | | construction as the “free HA” term, as |
| 8 | | construed by the Court. |

8 B. The ’795 Patent

9 The parties have agreed to the following constructions for these terms in U.S.
 10 Patent No. 8,357,795 patent (“the ’795 patent”):

| 11 | Claim Term (claim) | Agreed Construction |
|----|--------------------------------------|--|
| 12 | sterile | substantially free of detectable, viable |
| 13 | (claim 1) | microorganisms |
| 14 | lidocaine is freely released in vivo | plain and ordinary meaning |
| 15 | (claim 1) | |
| 16 | extrusion force | the force that one must apply to expel a |
| 17 | (claim 41) | soft tissue filler composition through the |
| 18 | | needle in its assembled, intended |
| 19 | | delivery system |

20 II. THE PARTIES’ PROPOSED CONSTRUCTIONS FOR DISPUTED 21 CLAIM TERMS AND SUPPORTING EVIDENCE

22 The Parties’ proposed constructions for the disputed claim terms in the ’475
 23 patent, along with an identification of supporting intrinsic and extrinsic evidence, is
 24 attached as Exhibit A. The Parties’ proposed constructions for the disputed claim
 25 terms in the ’795 patent, along with an identification of supporting intrinsic and
 26 extrinsic evidence, is attached as Exhibit B.

1 **III. LIST OF SIGNIFICANT TERMS**

2 The parties jointly identify the following terms as those for which
3 construction is most significant to the case:

- 4 1. stable
- 5 2. HA crosslinked with 1,4 butanediol diglycidyl ether (BDDE);
6 hyaluronic acid (HA) component crosslinked with 1,4-butanediol diglycidyl
7 ether (BDDE);
8 (BDDE)-crosslinked hyaluronic acid¹
- 9 3. hyaluronic acid (HA) component crosslinked with a crosslinking agent²
- 10 4. uncrosslinked HA; free HA³

11 **IV. PRESENTATION TIME FOR CLAIM CONSTRUCTION HEARING**

12 Allergan does not anticipate needing more than 45 minutes total for all its
13 presentation at the claim construction hearing.

14 Defendants do not anticipate needing more than 45 minutes total for all its
15 presentation at the claim construction hearing

16 **V. WITNESSES TO BE CALLED AT THE CLAIM CONSTRUCTION
17 HEARING**

18 Allergan does not propose to call any witnesses at the claim construction
19 hearing.

20 Defendants do not propose to call any witnesses at the claim construction
21 hearing.

22
23
24 ¹ The parties have agreed that these three terms, which appear in the asserted claims
25 of the '475 patent, should be construed the same.

26 ² The parties' proposed construction for this term, which appears in claim 1 of the
27 '795 patent, should be construed consistently with the corresponding terms of the
'475 patent, except for the identification of a specific crosslinking agent (BDDE)
('475 patent) versus any crosslinking agent ('795 patent).

28 ³ The parties have agreed that these terms, which appear in the asserted claims of the
'475 patent, should be construed the same.

1 Dated: June 6, 2014

2 By: /s/ Elizabeth M. Flanagan
3 Elizabeth M. Flanagan

4 Attorney for Plaintiffs

5
6 Dated: June 6, 2014

7 By: /s/ William F. Schmedlin
8 William F. Schmedlin

9 Attorney for Defendants

1 **SIGNATURE ATTESTATION**

2 Pursuant to Civil Local Rule 5-4.3.4(a)(2), I attest that counsel for Defendants
3 has authorized the filing of this document.

4
5 /s/ Elizabeth M. Flanagan
6 Elizabeth M. Flanagan

7 **CERTIFICATE OF SERVICE**

8 The undersigned hereby certifies that a true and correct copy of the above and
9 foregoing document has been served on June 6, 2014 to all counsel of record who
10 are deemed to have consented to electronic service via the Court's CM/ECF system
11 per Civil Local Rule 5.4. Any other counsel of record will be served by electronic
12 mail, facsimile and/or overnight delivery.

13
14 /s/ Elizabeth M. Flanagan
15 Elizabeth M. Flanagan
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